

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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CYNTHIA SAUNDERS, <u>et al.</u> ,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	07 Civ. 830 (SAS)(KNF)
	:	
CITY OF NEW YORK and THE DEPARTMENT	:	<b>ANSWER TO THE COMPLAINT</b>
OF EDUCATION OF THE CITY OF NEW YORK:	:	
NEW,	:	
	:	
Defendants.	:	
	:	
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Defendants City of New York ("New York City") and the Department of Education of the City of New York ("DOE") (collectively, "defendants"), by and through their attorney, **Michael A. Cardozo**, Corporation Counsel of the City of New York, for their answer to the complaint respectfully allege as follows:

**PARTIES**

1. Deny the allegations set forth in paragraph "1" of the complaint, except admit that plaintiffs were employed by defendants as either Parent Coordinators or Parent Support Officers in the DOE.
2. To the extent a response is required, defendants deny the allegations in paragraph "2" of the complaint, except admit that plaintiffs purport to proceed as set forth therein.
3. Paragraph "3" of the complaint does not set forth a factual allegation, thus, no response is required. To the extent a response is required, defendants deny the allegations set

forth in paragraph “3” of the complaint, including the assertion that plaintiffs are part of an alleged “class.”

4. Deny the allegations set forth in paragraph “4” of the complaint, except admit that plaintiffs purport to proceed as set forth in this paragraph.

5. Deny the allegations set forth in paragraph “5” of the complaint.

6. Deny the allegations set forth in paragraph “6” of the complaint

7. Deny the allegations set forth in paragraph “7” of the complaint

8. Deny the allegations set forth in paragraph “8” of the complaint, except admit that plaintiffs purport to proceed and invoke the jurisdiction of the Court as set forth in this paragraph.

9. Paragraph “9” of the complaint sets forth a legal conclusion only, and therefore no response is required. To the extent a response is required, defendants refer the Court to the statutes cited therein for a complete and accurate statement of its content.

10. Admit the allegations set forth in paragraph “10” of the complaint.

11. Deny the allegations set forth in paragraph “11” of the complaint, including the assertion that plaintiffs are part of an alleged “class,” except admit that plaintiffs are/were employed by defendants as either Parent Coordinators or Parent Support Officers in the DOE.

12. Defendants deny the allegations set forth in paragraph “12” of the complaint, except admit the allegation with respect to plaintiffs’ written consents.

13. Admit the allegations set forth in paragraph “13” of the complaint.

14. Admit the allegations set forth in paragraph “14” of the complaint.

15. Deny the allegations set forth in paragraph “15” of the complaint, except admit that the DOE’s principal office is located at Tweed Courthouse, 52 Chambers Street, New York,

New York 10007 and further admit that the Office of the Corporation Counsel's principal office is located at 100 Church Street, New York, New York 10007, and respectfully refer the Court to the statutes cited therein for a complete and accurate statement of their content.

16. Deny the allegations set forth in paragraph "16" of the complaint, except admit that in July 2003 the DOE began employing individuals in the in-house titles of Parent Coordinator and Parent Support Officer, and admit that Parent Coordinators are full-time school-based employees whose primary responsibilities are to create a welcoming environment in the school, address and resolve parent concerns and work with school administration and staff to increase parent involvement in children's education, and further admit that Parent Support Officers are full-time employees who work in one of the 34 district offices or one of the 10 Regional Offices of Parent Support at Learning Support Centers ("LSC") within the five boroughs of New York City and whose primary responsibilities include addressing and resolving parent inquiries, working closely with Regional Directors of Parent Support and other DOE employees to support parent education, outreach and engagement efforts at the district, regional and/or school level and supporting school-based Parent Coordinators through coaching and mentoring.

17. Deny the allegations set forth in paragraph "17" of the complaint, except admit that plaintiffs began their employment with the DOE in the title of either Parent Coordinator or Parent Support Officer in or after July 2003.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "18" of the complaint.

19. Deny the allegations set forth in paragraph "19" of the complaint.

20. Deny the allegations set forth in paragraph "20" of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegation that defendants failed to pay all plaintiffs at all or paid them in compensatory time at their straight rate when plaintiffs worked in excess of 40 hours in a work week.

21. Deny the allegations set forth in paragraph "21" of the complaint.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. Deny the allegations set forth in paragraph "23" of the complaint.

24. Deny the allegations set forth in paragraph "24" of the complaint, and affirmatively state that in August 2006, plaintiff Cynthia Saunders, through her counsel, submitted a letter to the DOE stating that since her appointment as a Parent Coordinator, she had not received cash payment at the rate of time and one-half for 218.5 hours she alleged to have worked in excess of 40 hours in a week.

25. Deny the allegations set forth in paragraph "25" of the complaint, except admit that in November 2006, the DOE offered to pay plaintiff Saunders for the 218.5 hours of overtime that she alleged to have had worked at the rate of time and one-half as long as she would enter into a Court approved stipulation of settlement settling any and all of her potential FLSA claims.

26. Deny the allegations set forth in paragraph "26" of the complaint.

27. Paragraph "27" of the complaint sets forth a legal conclusion only, and therefore no response is required. To the extent a response is required, defendants deny the allegations set forth in paragraph "27" of the complaint, and respectfully refer the Court to the sections of the statute cited therein for a complete and accurate statement of their contents.

28. Deny the allegations set forth in paragraph “28” of the complaint, and respectfully refer the Court to the Fair Labor Standards Act, 19 U.S.C. § 201 et seq. (“FLSA”) and the relevant case law, including Scott, et al., v. City of New York, 2004 U.S. Dist Lexis 11543 (S.D.N.Y. 2004), for an accurate statement of the obligations placed on public sector employers by the FLSA.

29. Deny the allegations set forth in paragraph “29” of the complaint, and respectfully refer the Court to the statute cited therein for a complete and accurate statement of its content.

30. Deny the allegations set forth in paragraph “30” of the complaint, and respectfully refer the Court to 29 U.S.C. § 216 (b) for a complete and accurate statement of its content.

31. Deny the allegations set forth in paragraph “31” of the complaint.

32. In response to the allegations set forth in paragraph “32” of the complaint, defendants hereby repeat and reallege the responses set forth in paragraphs “1” through “31” of this answer as if fully set forth herein.

33. Deny the allegations set forth in paragraph “33” of the complaint.

34. In response to the allegations set forth in paragraph “34” of the complaint, defendants hereby repeat and reallege the responses set forth in paragraphs “1” through “33” of this answer as if fully set forth herein.

35. Deny the allegations set forth in paragraph “35” of the complaint.

36. In response to the allegations set forth in paragraph “36” of the complaint, defendants hereby repeat and reallege the responses set forth in paragraphs “1” through “35” of this answer as if fully set forth herein.

37. Deny the allegations set forth in paragraph “37” of the complaint.

38. In response to the allegations set forth in paragraph “38” of the complaint, defendants hereby repeat and reallege the responses set forth in paragraphs “1” through “37” of this answer as if fully set forth herein.

39. Deny the allegations set forth in paragraph “39” of the complaint.

40. Paragraph “40” does not contain a factual allegation, thus no response is necessary.

41. Defendants deny each and every allegation in the complaint that is not specifically admitted herein.

#### **AFFIRMATIVE AND OTHER DEFENSES**

Defendants assert the following affirmative and other defenses without assuming any burden of production or proof that they would not otherwise have:

##### **FIRST DEFENSE**

Plaintiffs fail to state a claim upon which relief may be granted, either on their own behalf or on behalf of those persons whom they purport to represent.

##### **SECOND DEFENSE**

Plaintiffs’ claims are barred, in whole or in part, by the applicable limitations periods.

##### **THIRD DEFENSE**

This case may not be maintained as a collective action because the named plaintiffs are not similarly-situated to or otherwise adequate representatives for the persons whom they purport to represent.

##### **FOURTH DEFENSE**

To the extent that the named plaintiffs purport to bring a representative action, they are barred on constitutional grounds from doing so unless they demonstrate that a liability finding as to one plaintiff (or sub-group of plaintiffs) necessarily determines liability as to others.

**FIFTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by their failure to exhaust contractual remedies.

**SIXTH DEFENSE**

Defendants have not violated the FLSA as to the DOE's compensatory time practices because the compensatory time used or sought to be used was for non-FLSA overtime or, in the alternative, the requests cannot be separated as to whether they are intended to invoke FLSA or non-FLSA overtime.

**SEVENTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the de minimis doctrine.

**EIGHTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by operation of the Portal-to-Portal Act.

**NINETH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, estoppel and waiver.

**TENTH DEFENSE**

Defendants have at all times acted in good faith and had reasonable grounds for believing that the DOE's pay practices complied with the FLSA.

**ELEVENTH DEFENSE**

Plaintiffs' claims are barred, in whole or in part, by their failure to add Local 372, District Council 37, AFSCME, plaintiff's union, as a necessary party to this action to ensure uniformity of contract interpretation and implementation.

**TWELFTH DEFENSE**

Subject to proof through discovery, plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

**THIRTEENTH DEFENSE**

Plaintiffs are barred from recovery of some or all of the damages sought because they are not authorized by the FLSA, the Constitution of the State of New York and/or the United States Constitution.




**WHEREFORE**, defendants pray that the Court enter a judgment:

1. dismissing the complaint with prejudice;
2. granting to defendants their costs, including attorneys' fees, incurred in this action; and
3. granting to defendants such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
April 16, 2007

**MICHAEL A. CARDOZO**

Corporation Counsel of the City of New York  
Attorneys for Defendants

By   
Michele Molfetta (MM-9947)  
New York City Law Department  
100 Church Street, Room 2-146  
New York, New York 10007  
(212) 788-0922

**CERTIFICATE OF SERVICE**

I, **Michele A. Molfetta**, hereby certify that, on April 16, 2007, I caused a true and correct copy of the foregoing Answer to the Complaint to be served upon plaintiffs' attorney Leonard D. Polletta by ECF, and by overnight express mail, next business day delivery, addressed to plaintiffs' counsel "Leonard D. Polletta, Eddie M. Demmings, General Counsel, District Council 37, AFSCME, AFL-CIO, 125 Barclay Street, Room 510, New York, NY 10007," that being the address that plaintiffs designated for receipt of such material.

Dated: New York, New York  
April 16, 2007

  
MICHELE A. MOLFETTA (MM 9947)

07 Civ. 830 (SAS)(KNF)

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SOUTHERN DISTRICT OF NEW YORK

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NEW,

Defendants.

**ANSWER TO COMPLAINT**

**MICHAEL A. CARDOZO**

*Corporation Counsel of the City of New York*

Attorney for Defendants

100 Church Street, Room 2-146

New York, New York 10007-2601

Of Counsel: Michele A. Molfetta

Tel No.: (212) 788-0922

NYCLIS No.:2007-005255

*Due and timely service is hereby admitted.*

*Dated:* New York, N.Y. ...., 2007

Signed: .....

Print Name: .....

Attorney for .....